

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JORGE SPRAU,

Plaintiff,

v.

**Civil No. 9:02-CV-0998
(GLS/RFT)**

**ROBERT J. MURPHY; P. GONYER;¹ T.
BROSSEAU; T. ROCQUE; T. MARLOW;
J. RICHARDS,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

JORGE SPRAU
Plaintiff, Pro Se
Riverview, C.F., P.O. Box 247
Ogdensburg, NY 13669

FOR THE DEFENDANTS:

HON. ELIOT SPITZER
Attorney General, State of New York
615 Erie Blvd. West, Suite 102
Syracuse, NY 13204-2455

DEBORAH A. FERRO, ESQ.
Assistant Attorney General

**Gary L. Sharpe
U.S. District Judge**

¹The Defendant's correct name is "Gonyea" not "Gonyer" as referred to in the caption.

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff *pro se* Jorge Sprau brings this action pursuant to 42 U.S.C. § 1983. Sprau alleges that defendants used excessive force on his body, violated his First Amendment rights by failing to assist him with filing grievances, and denied him due process of the law in a disciplinary hearing. Although Sprau has objected to the Report-Recommendation of Magistrate Judge Randolph F. Treece's Report-Recommendation, those objections are nothing more than a reiteration of the allegations in his complaint and add nothing new for this court to consider. Upon careful consideration of the objections, the relevant parts of the record, and the applicable law, and having conducted a *de novo* review, the court adopts the Report-Recommendation in its entirety.

II. Procedural History

Sprau commenced this action on August 2, 2002. *Dkt. No. 1*. On February 4, 2004, the defendants moved for summary judgment. *Dkt. No. 51*. On September 29, Judge Treece issued a Report-Recommendation which recommended granting the defendants' motion and dismissing Sprau's complaint in its entirety. *Dkt. No. 62*. Sprau objected. *Dkt. No. 65*.

III. Discussion²

A. Standard of Review

The Court reviews the objected-to findings and recommendations in a magistrate judge's report-recommendation *de novo*, and will accept the report's uncontested parts unless they are "clearly erroneous." See 28 U.S.C. § 636(b)(1)(A),(C); *Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900 F.2d 522, 525 (2d Cir. 1990). The court adopts the summary judgment standard as it is correctly articulated in Judge Treece's Report-Recommendation. *Dkt. No. 62*.

B. Report-Recommendation

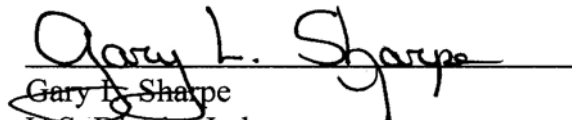
Judge Treece properly points out in his Report-Recommendation that Sprau has failed to exhaust his administrative remedies. Sprau does not assert in his complaint that he has filed or attempted to file any grievances. *Dkt. No. 1*. However, in Sprau's objections to the Report-Recommendation, he claims that he tried to file grievances through the appropriate filing procedure, thereby exhausting his administrative remedies. *Dkt. No. 65*. Presuming without deciding that Sprau exhausted

² The court adopts the factual summary in Judge Treece's Report-Recommendation, and assumes familiarity with the facts alleged in Sprau's complaint. *Dkt. No. 1*; *Dkt. No. 62*.

his administrative remedies, his §1983 claim is insufficient on the merits. The merits of Sprau's claim are thoroughly addressed in Judge Treece's Report-Recommendation. Therefore, for the reasons articulated in Judge Treece's Report-Recommendation, this court adopts the Report-Recommendation in its entirety.

Accordingly, the Defendants' Motion for Summary Judgment is **GRANTED** and the Complaint is **DISMISSED**.

September 28, 2005
Albany, New York



Gary L. Sharpe
U.S. District Judge